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SUPREME COURT, U.S.

No. 05-1654

In the Supreme Court of the United States

DANNY MAIDEN,

Petitioner,

v.

NORTH AMERICAN STAINLESS

and

STEVEN SHAVER,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

The defendant, North American Stainless ("NAS"), formerly known as North American Stainless Limited Partnership, hereby discloses that, as of December 31, 2005, it is a general partnership with no parent corporation. The managing general partner of NAS is Stainless Steel Invest, Inc., a Delaware corporation which is not a publicly held corporation. The only other partner of NAS is Stainless Alloys, Inc., a Delaware corporation which is not a publicly held corporation.

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SUMMARY OF REASONS TO DENY THE PETITION

The petition seeks only to have this Court correct alleged errors in the district court and court of appeals. The petitioner has not presented a "compelling reason" to grant his Petition for a Writ of Certiorari. *See* Sup. Ct. R. 10. The decisions of the district court and court of appeals do not conflict with a decision of this Court, any court of appeals or any state court of last resort. Likewise, no federal question was resolved by the lower courts over which a conflict must be resolved, and there has not been a showing of judicial departure to warrant this Court's exercise of its supervisory powers. Moreover, the decisions of the district court and Sixth Circuit Court of Appeals were correct.

STATEMENT OF THE CASE

A. Procedural Background

The petitioner is a former at-will employee of the respondent North American Stainless ("NAS") who was discharged from his employment on or about August 29, 2002. (R.1, Notice of Removal, Complaint ¶9, Apx. p. 16). NAS owns and operates a stainless steel manufacturing facility located in Carroll County, Kentucky. (R.1,Notice of Removal, Complaint ¶2, Apx. p.15). The respondent Steven Shaver ("Shaver") was and is a supervisory employee of NAS. (R.1, Notice of Removal, Complaint ¶2, Apx. p. 15).

The action below was one of three actions filed by or on Maiden's behalf related to his August 29, 2002 discharge. The Commonwealth of Kentucky, Labor Cabinet, Occupational Safety and Health Program (hereinafter the "KOSHA") filed an administrative action, KOSHRC Docket No. D-37-03 ("KOSHA proceeding"), on Maiden's behalf in

response to Maiden's complaint to the agency that NAS discharged him in retaliation for voicing health and safety concerns with a representative of the Commonwealth of Kentucky Department of Environmental Protection (hereinafter "DEP representative"). NAS successfully defended the merits of the retaliatory discharge allegations in the KOSHA proceeding.

Prior to completion of the KOSHA proceeding, Maiden filed a separate civil action for wrongful termination in Carroll County, Kentucky, Circuit Court, naming NAS and KOSHA as defendants (hereinafter "*Maiden I*"). The allegations in *Maiden I* were identical to those that KOSHA was concurrently pursuing on behalf of Maiden in the KOSHA proceeding. That is, Maiden alleged that he was wrongfully terminated on August 29, 2002 for having voiced health and safety complaints regarding NAS to the DEP representative.

Asserting diversity jurisdiction, NAS removed *Maiden I* from Carroll Circuit Court to the United States District Court for the Eastern District of Kentucky. (U.S. District Court, Eastern District of Kentucky Case No. 3:03-CV-14-JMH). As jurisdictional grounds for the motion, NAS asserted that KOSHA was a nominal party because no affirmative relief was sought against the state administrative agency. NAS subsequently moved to dismiss *Maiden I* on grounds that Maiden's state law wrongful discharge claim was preempted by the enforcement scheme of Kentucky's OSHA statute, K.R.S. § 338.121(3)(b).

The district court agreed and dismissed *Maiden I*. Maiden appealed the district court's dismissal to the Sixth Circuit Court of Appeals, which affirmed the dismissal. *See* Case No. 03-5740. No further appeal of *Maiden I* was taken.

While *Maiden I* was pending on appeal before the Sixth Circuit, Maiden made a third attempt to seek legal redress for his August 29, 2002 dismissal. On August 19, 2003, Maiden filed this action (hereinafter "*Maiden II*") in Carroll County, Kentucky, Circuit Court and named his supervisor, Steven Shaver, and NAS as defendants. The *Maiden II* complaint also alleged wrongful discharge, but not based upon retaliation for talking with the DEP representative. Instead, Maiden asserted that his August 29, 2002 discharge was in retaliation for having "cooperated" with the local sheriff's department regarding an investigation of allegedly stolen property (a piece of heavy equipment) which was purportedly in NAS's possession. Maiden's new complaint made no mention of his prior lawsuit and prior administrative action against NAS or his previous allegations that his August 29, 2002 dismissal had been in retaliation for making complaints to a state environmental inspector. Maiden also added a new allegation that NAS "acting by and through the Defendant Steve Shaver and others" "began a series of wrongful steps to maliciously interfere with Plaintiff's expectancy of prospective business and employment relations . . . ."

Although Steve Shaver and Maiden both had Kentucky residency, NAS removed the matter to the United States District Court for the Eastern District of Kentucky pursuant to the Court's diversity jurisdiction because the Complaint was stated in a manner that no cause of action had been pled against Shaver other than acting as an agent of and on behalf of NAS. In response to a motion to remand by Maiden, the district court agreed with NAS that Shaver's joinder had been "fraudulent" and that the Complaint did not state a claim against Shaver and, hence, Shaver's citizenship should be ignored for purposes of determining whether diversity jurisdiction existed.

NAS subsequently moved to dismiss the Complaint based upon (1) improperly splitting the causes of action, (2) failure to state a cause of action for wrongful discharge under Kentucky's employment at will doctrine, and (3) failure to state a cause of action for intentional interference with contractual relations. The district court granted NAS's motion to dismiss. Maiden appealed, and the Sixth Circuit Court of Appeals affirmed. Maiden's motion for an *en banc* rehearing was denied.

Maiden now seeks review of the court of appeals decision which upheld dismissal of *Maiden II*.

REASONS FOR DENYING THE PETITION

The "issues" set forth in the petition can be divided into two categories. The first two relate to what the petitioner describes as the "corporate wrongs" doctrine, and the last two address whether the claim for intentional interference was sufficiently pled. Both of these issues, as it relates to this case, concern the sufficiency of the pleadings and do not require the resolution of a federal question or the necessity to resolve a conflict with a decision of this Court, any court of appeals or any court of last resort. Thus, there has been no compelling reason presented to justify this Court's review of these issues.

I. The "corporate wrongs" issue was a supplemental, nonessential, reason cited by the district court for finding fraudulent joinder, and the circuit court of appeals found it unnecessary to address the issue because of the petitioner's failure to seek relief against Shaver individually.

The issue of the "corporate wrongs" doctrine relates only to Maiden's intentional interference with contractual relations claim and whether the district court should have granted Maiden's motion to remand based upon lack of diversity jurisdiction due to Shaver's Kentucky citizenship. The issue that the petitioner is asking this Court to resolve is whether Shaver, acting in his capacity as an agent for the employer, can be individually liable for those actions and, thus, whether Shaver's citizenship should have been considered for purposes of resolving the jurisdictional issue. The district court's denial of the motion to remand did not turn on the "corporate wrongs" doctrine or a resolution of this issue, however. The district court's decision was based upon the failure of the Complaint to seek relief directly from Shaver. The question

of whether Shaver could be individually liable for his alleged "corporate wrongs" and, thus, a proper defendant, was mentioned by the district court as a supplemental basis for denying the motion. The district court stated:

> Upon examination of the record, the Court concludes that Plaintiff cannot establish a cause of action against the non-diverse Defendant, Shaver, under state law, thereby permitting removal of this action to the federal court. As Defendants correctly point out, Maiden did not seek any relief directly from Shaver. In Count One of his complaint, Plaintiff specifically states that, " . . . Plaintiff has incurred lost past wages, and loss of future income . . . for all of which Plaintiff is entitled to be compensated by NAS." (Complaint ¶ 15). Moreover, in Count Three Plaintiff unequivocally states that, since Defendant NAS was acting through its agents, including Steve Shaver, " . . . NAS either authorized or ratified, or should have anticipated and taken steps to prevent, the misconduct of its agent . . . therefore their [the agent's] liability for the Plaintiff's damages . . . is imputable to NAS. (Complaint ¶ 25).
>
> **Moreover**, it is the Court's determination that Maiden ultimately would be unable to state a cause of action against Shaver, as he is merely an agent of Defendant NAS. As an agent of NAS, Shaver did nothing other than act in his official capacity. Indeed, it has not been alleged that Shaver did anything wrongful except execute the allegedly wrongful act of the corporate defendant. The alleged wrongs of which Plaintiff complains are all corporate wrongs. Plaintiff does not and apparently cannot allege that the individual defendant owed him any duty in his individual

> capacity, nor that he did any act in his individual capacity which violated any such duty or otherwise caused plaintiff harm except as a result of corporate acts.

(Pet. App. 16a) (emphasis added). Thus, the basis for the Court's decision was not that Shaver could never be legally accountable for his actions, but that the Complaint had not been pled to seek relief from Shaver individually.

Furthermore, on appeal, the Sixth Circuit did not address the "corporate wrongs" issue and made its decision solely on the insufficiency of the Complaint. In affirming the district court, the court of appeals stated:

> As a preliminary matter, we assess the jurisdictional issue surrounding whether Maiden fraudulently joined Shaver. In deciding whether Maiden fraudulently joined Shaver, we examine the complaint, as the district court did, to determine whether the complaint evidenced that Maiden "had at least a colorable cause of action against [Shaver] in the . . . state courts." [citation omitted]
>
> In pleading both his wrongful termination claim and his intentional-interference claim, Maiden targeted NAS as "acting by and through [Shaver]. . . ." But Maiden's complaint neither sought any relief directly from Shaver nor alleged that Shaver himself acted unlawfully; the complaint did not seek damages from Shaver individually. In the absence of a colorable cause of action against Shaver, the district court properly determined Maiden fraudulently joined

> Shaver. That being so, we find no error in the denial of Maiden's motion to remand the case to state court.

(Pet. App. pp. 2a-3a).

Thus, the lower courts' determination that diversity jurisdiction existed did not turn on a resolution of whether individual employees can be liable for "corporate wrongs." Rather, the issue was whether the Complaint had been pled to state the claim only against NAS, the employer, and against Shaver, the individual employee as well.

II. Even if the issue of "corporate wrongs" had been essential to the district court or circuit court's findings, the issue is one of state, not federal law.

Even if the district court or court of appeals had based their decisions on the issue of whether an individual may be liable for "corporate wrongs" and although the petitioner characterizes the issue as one of "Kentucky (and American) tort law," the substance of the issue is purely a state law question. Hence, the petitioner has not shown a determination regarding a federal question that conflicts with a decision by a state court of last resort, nor that the decision is in conflict with the decision of another United States court of appeals. Moreover, since the question was not resolved by the Sixth Circuit of Appeals, the petitioner has not shown that the circuit court sanctioned a departure by the district court from the accepted and usual course of judicial proceedings. Accordingly, the criteria set forth in Supreme Court Rule 10 have not been satisfied.

III. The issue of reliance upon Rule 8 and form 9 was not raised before the court of appeals and is not a compelling reason to justify review.

The final two "questions presented for review" are related to sufficiency of the pleadings and the standards required when ruling on a motion to dismiss pursuant to Rule 12(b)(6), Fed. R. Civ. P. First, neither of these issues as set forth in the "questions presented for review" were raised before the Court of Appeals. Furthermore, the "questions" appear to be rhetorical statements, rather than presenting a "compelling reason" why the petition for writ of certiorari should be granted. Moreover, even if the issues are restated to address the substance raised in the petition, the issue is simply whether the district court erred in applying established law to the facts of this case and, hence, review by this Court is not appropriate.

The petitioner does not cite any portion of the record in which either of the lower courts held that the "pleaders are [not] entitled to rely upon rule 8 of the federal rules of civil procedure and form 9 appended to the rules in drafting complaints." Clearly, Rule 8 sets forth the standard for drafting a "claim for relief" and hence, not only was the petitioner entitled to "rely" upon the rule, but the petitioner was ***required to comply*** with the rule in drafting the Complaint. Thus, the rhetorical question as to whether pleaders are "entitled" to rely upon Rule 8 appears to challenge the findings of the district court and court of appeals that the petitioner failed to sufficiently set forth the facts in his complaint to overcome NAS's Rule 12(b)(b) motion to dismiss for failure to state a cause of action, rather than seek a resolution of that question. Likewise, the question as to whether pleaders are entitled to rely on Form 9 is rhetorical

in that the form would not have been offered if reliance was not permissible.

The substance of the petitioner's brief establishes that the issue that the petitioner is asking this court to review is whether the *Maiden II* complaint sufficiently sets forth a cause of action for intentional interference with contractual relations. Thus, the petitioner is asking this Court to compare the elements of a cause of action for intentional interference with contractual relations with the elements set forth in his cause of action and determine whether the district court and court of appeals were correct in determining that the cause of action had not been sufficiently pled to defeat the 12(b)(6) motion. The petitioner does not set forth a question of federal law upon which resolution of this issue will turn, nor does the petitioner identify that the Sixth Circuit Court of Appeal's resolution of this issue conflicts with a decision of this Court, with a decision of another federal appellate court or with a decision by a state court of last resort. The petitioner's request for this Court to review application of the established legal precedents to the particular facts of this case does not demonstrate a compelling reason to grant the petition and does not meet the criteria of Supreme Court Rule 10.

CONCLUSION

The petition seeks only review of alleged errors by the district court and court of appeals. There is no conflict among circuits or state courts of last resort for this Court to resolve, nor any federal questions to be resolved. Thus, the petitioner's alleged errors do not present a "compelling reason" why this Court should review these issues, and based on the foregoing, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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